

Message

From: Pratt, Stacie [Pratt.Stacie@epa.gov]
Sent: 12/19/2018 3:26:11 PM
To: Jamieson, Cheryl [Jamieson.Cheryl@epa.gov]
Subject: FW: New Civil Judicial Litigation and Potential Litigation

As discussed.

From: Pratt, Stacie
Sent: Monday, December 17, 2018 3:07 PM
To: Bunker, Kelly <Bunker.Kelly@epa.gov>
Subject: Re: New Civil Judicial Litigation and Potential Litigation

Hi Kelly. Is this guy asking legal or what program questions? I'd see what he is interested in before punting to Cheryl. You may also want to tell him the call is rescheduled, and he may want to hear more during that call, if his questions are of a program nature.

Hope this helps.

Thanks.

Sent from my iPhone

On Dec 17, 2018, at 12:21 PM, Bunker, Kelly <Bunker.Kelly@epa.gov> wrote:

Hi Stacie – Do you want to ask Cheryl to respond to this since it is a legal matter?

From: Ramanauskas, Peter
Sent: Monday, December 17, 2018 11:11 AM
To: Bunker, Kelly <Bunker.Kelly@epa.gov>
Subject: FW: New Civil Judicial Litigation and Potential Litigation

Hi Kelly,

Our TSCA enforcement folks would be interested in hearing more about R3's experience with the first bulleted item below. I know this was a topic on the last PCB Manager's call, but I wasn't able to sit in on that. Would you and/or others from R3 be willing to hop on a call with our folks to discuss? Didn't know if this was potentially up for further discussion on a monthly PCB Tech Call maybe.

Thanks,
Peter

From: Frey, Bert
Sent: Friday, December 14, 2018 8:37 AM
To: R5 ORC ALL ATTORNEY <R5_ORC_ALL_ATTORNEY@epa.gov>
Subject: New Civil Judicial Litigation and Potential Litigation

- *Hazelton Creek Properties v. EPA*, No. 18-3665 (3d Cir.). New Litigation: On December 5, 2018, Hazelton Creek Properties, located in Moosic, PA, filed a petition for review under TSCA section 19(a) in the US Court of Appeals for the Third Circuit challenging a Notice of Noncompliance (NON) issued by EPA Region 3. The NON asserts that placement of PCB materials on the site

property at levels over 2 ppm, in compliance with a Pennsylvania State permit and Pennsylvania policy, constitutes a violation of the EPA TSCA PCB regulations, and cautions that further receipt by the company of such materials may result in EPA enforcement. The Notice states that “No corrective action is necessary by your company at this time”.

- Notice of Intent To Sue – Clean Water Act Section 303(d) – Ohio. On December 4, the Environmental Law & Policy Center (ELPC) transmitted a Notice of Intent to Sue (NOI) alleging EPA inaction with respect to a supposed failure by EPA to complete its mandatory duty under section 303(d)(2) of the CWA to act on a constructive submission of “no TMDL” (Total Maximum Daily Load) by Ohio for western Lake Erie. ELPC asserts that “Ohio is manipulating its priority ranking system in order to avoid its obligation to establish a TMDL.” The claims alleged in this NOI seem to be identical to those addressed in a favorable opinion from Judge Carr in the Northern District of Ohio on October 3, 2018. OGC is currently evaluating EPA’s litigation options.
- Notice of Intent To Sue – TSCA 6(a) methylene chloride rule. On December 6, NRDC “joined” a notice of intent to sue to compel EPA to finalize its pending proposed rule under TSCA section 6(a) to address methylene chloride in paint and coating removers. The NOI was submitted on October 31 by several organizations, including Safer Chemicals Healthy Families, and the mothers of two individuals who died while using MC-containing products under TSCA’s citizen suit provision, section 20(a)(2), for failure to perform a non-discretionary act under TSCA sections 6(a) and 7(a). TSCA section 20(b) bars the commencement of a civil action earlier than 60 days after the notice is filed, or for TSCA section 7 actions, earlier than 10 days after such notice.